

AMENDED IN SENATE JULY 1, 2011
AMENDED IN SENATE MAY 11, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 921

Introduced by Senators Lieu and Correa

February 18, 2011

An act to add Article 2.5 (commencing with Section 150) to Chapter 2 of Part 1 of Division 2 of the Military and Veterans Code, relating to the Military Department, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 921, as amended, Lieu. Military Department: Office of the Inspector General.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corp, and the Naval Militia. There is also, within the Military Department, the Office of the State Military Department Inspector General. The State Military Department Inspector General inspects, audits, investigates, trains, and performs various duties necessary to support the mission of the Military Department.

This bill would require the State Military Department Inspector General to be independent of the chain of command of the Military Department. This bill would require the Governor to appoint the inspector general, subject to Senate confirmation. This bill would specify the duties of the State Military Department Inspector General, and would require the inspector general to establish a toll-free public telephone

number to receive these complaints and allegations. This bill would also require that disciplinary action be brought against a state officer or employee who intentionally retaliates against a person who made a complaint or allegation of wrongdoing to the State Military Department Inspector General, as provided, and would specify that these officers and employees may be liable for civil damages for these same actions.

This bill would require the inspector general to investigate specified complaints and allegations of misconduct upon written request of specified persons and would provide that those requests are not a public record under the California Public Records Act.

The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2.5 (commencing with Section 150) is
2 added to Chapter 2 of Part 1 of Division 2 of the Military and
3 Veterans Code, to read:

4

5 Article 2.5. State Military Department Inspector General

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7 150. For purposes of this article, the following terms have the
8 following meanings:

9 (a) "Department" means the Military Department.

10 (b) "Office" means the Office of the State Military Department
11 Inspector General.

12 (c) "Inspector general" means the State Military Department
13 Inspector General.

14 150.10. (a) The inspector general shall be independent of the
15 chain of command of the Military Department.

16 (b) The inspector general shall meet the same qualifications
17 established in this code for the Adjutant General.

1 (c) (1) The Governor shall appoint the inspector general, subject
2 to confirmation by the Senate.

3 (2) Upon confirmation by the Senate, the inspector general shall
4 serve at the discretion of the Governor.

5 (3) The inspector general shall serve on state active duty at the
6 grade of O-6.

7 150.11. (a) The department shall, from the amount annually
8 appropriated to it for purposes of this office, fund the position of
9 inspector general and provide the office space and support
10 personnel requested by the inspector general.

11 (b) The inspector general shall have access to all employees
12 and documents of the department.

13 150.12. (a) The inspector general may receive communications
14 from any person, including, but not limited to, any member of the
15 California National Guard, the State Military Reserve, and the
16 Naval Militia.

17 (b) The inspector general shall establish a toll-free public
18 telephone number to receive the complaints and allegations
19 described in subdivision (a) of Section 150.13. The inspector
20 general shall post this telephone number in clear view at every
21 California National Guard armory, flight facility, airfield, or
22 installation.

23 150.13. (a) At the discretion of the inspector general or, upon
24 a written request by the Governor, a member of the California
25 Legislature, the Adjutant General, or any member of the public,
26 the inspector general shall investigate any of the following:

27 (1) Complaints that the Adjutant General or the Assistant
28 Adjutant General has engaged in discrimination or retaliation for
29 whistleblowing.

30 (2) Allegations of misconduct by the Adjutant General or the
31 Assistant Adjutant General.

32 (3) Allegations of misconduct by any member of the California
33 National Guard.

34 (b) If the inspector general conducts an investigation at the
35 request of a member of the California Legislature, the inspector
36 general shall submit to that member a report of his or her findings
37 of that investigation.

38 (c) (1) A request described in subdivision (a) is not a public
39 record and is not subject to disclosure under the California Public

1 Records Act set forth in Chapter 3.5 (commencing with Section
2 6250) of Division 7 of Title 1 of the Government Code.

3 ~~(2) Notwithstanding paragraph (1), the inspector general may,~~
4 ~~at his or her discretion, disclose to the Governor, a member of the~~
5 ~~California Legislature, or to a law enforcement agency the identity~~
6 ~~of a person making a written request or an allegation or complaint~~
7 ~~described in subdivision (a).~~ The inspector general shall not
8 disclose to any ~~other~~ person or entity the identity of a person
9 making a written request or an allegation or complaint described
10 in subdivision (a), unless the person making the request, allegation,
11 or complaint has consented to the disclosure in writing.

12 (d) When deemed appropriate by the inspector general, the
13 inspector general shall refer to the federal Inspector General of the
14 Department of Defense any complaints and allegations pertaining
15 to violations of federal military laws or regulations.

16 150.14. (a) Any state officer or employee who intentionally
17 engages in acts of reprisal, retaliation, threats, coercion, or similar
18 acts against an employee of any state department, board, or
19 authority for having disclosed what the employee, in good faith,
20 believed to be a complaint or allegation described in subdivision
21 (a) of Section 150.13 shall be disciplined by adverse action as
22 provided in subdivision (a) of Section 19574 of the Government
23 Code. If no adverse action is instituted by the appointing power,
24 the State Personnel Board shall take adverse action against the
25 officer or employee in the same manner as provided in Section
26 19583.5 of the Government Code.

27 (b) In addition to all other causes of action, penalties, or other
28 remedies provided by law, any state officer or employee who
29 intentionally engages in acts of reprisal, retaliation, threats,
30 coercion, or similar acts against an employee for having disclosed
31 what the employee, in good faith, believed to be a complaint or
32 allegation described in subdivision (a) of Section 150.13 shall be
33 liable in an action for damages brought against him or her by the
34 injured party. Punitive damages may be awarded by the court if
35 the acts of the offending party are proven to be malicious. If
36 liability has been established, the injured party also shall be entitled
37 to reasonable attorney's fees as provided by law.

38 (c) For purposes of this section "state officer" includes, but is
39 not limited to, a member of the Military Department on state active

1 duty and any officer who holds a state commission or appointment
2 by the Governor.

3 SEC. 2. The Legislature finds and declares that Section 1 of
4 this act, which adds Section 150.13 to the Military and Veterans
5 Code, imposes a limitation on the public's right of access to the
6 meetings of public bodies or the writings of public officials and
7 agencies within the meaning of Section 3 of Article I of the
8 California Constitution. Pursuant to that constitutional provision,
9 the Legislature makes the following findings to demonstrate the
10 interest protected by this limitation and the need for protecting
11 that interest:

12 In order to protect the confidentiality of those persons making
13 complaints or allegations, as authorized by this act, from any form
14 of retaliation for having made the complaint or allegation, it is in
15 the state's interest to limit public access to information.

16 SEC. 3. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

20 In order to ensure that Military Department personnel who are
21 employed in ~~State~~ *state* active duty, and thus are not under federal
22 military oversight, as well as those subject to the control of these
23 personnel, receive due process in the consideration of complaints
24 and appeals of disciplinary actions, *it is necessary for this act to*
25 *take effect immediately.*